defendant's name was made through a *bona fide* mistake and that he was entitled to the order prayed for on the authority of *Challinor* v. *Roder and Others* (1) and *W. Hill & Son* v. *Tannerhill.* (2)

The relevant commentary under Order 16 rule 11 appearing at page 349 of the *Annual Practice* 1962 (Vol. 1) under the sub-title "Mistake as to defendant" reads as follows:

"Leave will be given to amend the name or description of the defendant, where this can be regarded as the correction of a mere misnomer, but leave will be refused if the amendment sought amounts in substance to the addition or substitution of a new defendant against whom the claim is statute barred (*Davies* v. *Elsby Brothers, Ltd.*, [1961] 1 W.L.R. 170; [1960] 3 All E.R. 678, C.A.). The test is whether or not the entity or identity of the defendant remains the same (*ibid., per* Devlin L.J.). *Challinor* v. *Roder* (1885), 1 T.L.R. 527, can no longer be treated as having any authority."

The question for consideration in this case is whether the proposed amendment amounts to an application to correct a misnomer or to substitute a new defendant. Substitution implies the existence of two distinct entities, with one replacing the other. At no time material to the issues in the present case was there any entity known as the Federation of Malaya. There can therefore be no question in this case of substituting one defendant for the other. What is being asked for is the substitution of one name for another for the same entity that had been sued.

The 1st defendant is being sued as the employer of the 3rd defendant. It is not disputed that the name of the employer is the Federation of Malaysia. The address of the 1st defendant is given in the writ as c/o the Attorney-General, Kuala Lumpur. The address is that of the Attorney-General of the Federation of Malaysia. It is quite obvious that the 1st defendant was described as the Federation of Malaya through sheer inadvertence or perhaps in this case through force of habit.

I shall therefore make an order in terms of the prayers in the summons with costs to the 1st defendant.

Application allowed.

Solicitors: *Gibb & Co.*

WONG FATT HENG v. GAMMON MALAYA LTD.

[O.C.J. (Choor Singh J.) August 5, 1965]

[Singapore — Suit No. 1091 of 1964]

Negligence — Damages for personal injuries sustained in road accident — Assessment of damages.

Damages — Leg — Shortening — Pubic rami — Urinary bladder.

This was a claim for damages in respect of personal injuries sustained by the plaintiff in a road accident. The plaintiff aged 21 worked as a mason during the day and a part time goldsmith at night and had a total monthly income of about $400. He sustained the following injuries: (a) compound fracture of the shaft of the left tibia and fibula; (b) fracture of the superior pubic rami on both sides and the left interior pubic ramus on the left side; (c) contusion of the urinary bladder and extra-peritoneal haemorrhage; and (d) minor abrasions. Although (b) and (d) healed without further trouble, injuries from (a) and (c) resulted in permanent disabilities. On the evidence the judge found that the accident was caused solely by the negligence of the defendant's driver. On a question of general damages,

Held: taking into account the permanent disabilities suffered by the plaintiff and the consequences thereof, the loss of amenities, the pain and suffering the plaintiff underwent and the loss of future earning, the general damages should be assessed at $20,000.

Cases referred to:—

(1) *Bird* v. *Cocking & Sons Ltd.* [1951] 2 T.L.R. 1260, C.A.

(2) *L. B. Drennan* v. *R. F. Greer* [1957] M.L.J. 77, C.A.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Cheng Tim Pin for the defendant.

Choor Singh J.: This was a claim for damages in respect of personal injuries sustained by the plaintiff in a road accident on the 22nd November 1963 when he was cycling along Race Course Road in the direction of Rangoon Road in the State of Singapore and was run into and knocked down by motor vehicle No. SP 5600 which was being driven in the same direction by the servant or agent of the defendants.

The plaintiff alleged that the collision was caused solely by the negligence of the servant or agent of the defendants and that by reason thereof he had suffered injuries, had endured pain and had been put to loss and expense. The defendants admitted the said collision between the plaintiff's bicycle and the defendants' motor vehicle No. SP 5600 and admitted further that the said motor vehicle was being driven by their servant or agent but denied the allegation of negligence. The defendants alleged that the said collision was caused or contributed to by the negligence of the plaintiff.

The plaintiff's version of the accident was as follows. On the 22nd November 1963 he was riding his bicycle along Kinta Road in the direction of Race Course Road. On reaching Race Course Road he turned right into Race Course Road and proceeded in the direction of Rangoon Road. There were cars parked on the left side of Race Course Road and he was cycling about two or three feet away from the line of parked cars. As he was about to reach the last car in the line of parked cars, the defendants' Land Rover No. SP 5600 came from behind and rammed into his bicycle. He was thrown from his bicycle and was injured. His bicycle was damaged.

The version of Tan Ah Poh who was driving Land Rover No. SP 5600, the vehicle involved in

the collision, was as follows. He was driving the Land Rover along Race Course Road at "20 or slightly more than 20" miles per hour and was travelling along the crown of the road. There were no vehicles travelling ahead of him in the same direction. He saw a cyclist about 30 feet ahead of him, travelling in the same direction. The cyclist was travelling six or seven feet away from the nearside edge of the road. There were no cars parked on the nearside of the road. When the Land Rover was about four or five feet from the cyclist, all of a sudden, the cyclist swerved to the right, on to the path of the Land Rover and there was a collision. Tan Ah Poh stated that he immediately applied his brakes but could not avoid hitting the cyclist.

In some other proceedings, in a magistrate's court, Tan Ah Poh had told the magistrate, "When I first saw the bicycle it was four or five feet away. It was very near." And again, "When I first saw it four or five feet away it was not in my path". In his report to the police, this witness had stated that the cyclist was travelling in a zig zag manner and when questioned about it before me, he alleged that the police officer who recorded his report did not understand him. In the magistrate's court, this witness had stated that he could not remember if there were cars parked on the left side of Race Course Road, whereas, before me, he was emphatic that there were no cars parked on the left side of Race Course Road. Under cross examination, when pressed, he stated, "The truth is there were no parked cars". He was then asked, "So what you told the magistrate was not correct?" The witness gave no answer.

There were three Indians sitting at the back of the Land Rover. They did not see the collision and could throw no light on the circumstances under which it occurred.

The plaintiff's bicycle was produced in court. One look at the bicycle was sufficient to indicate what had happened. The Land Rover had evidently rammed into the rear wheel of the bicycle which had buckled under the impact. The Land Rover was examined by the police for damage. A slight dent was found on the front nearside mudguard. The front nearside side lamp was broken. The front nearside of the Land Rover had evidently rammed into the rear wheel of the bicycle, causing the bicycle and its rider to be thrown to the left and this explained why the bicycle was not run over by the Land Rover. If the cyclist, when four or five feet ahead of the Land Rover, had suddenly swerved to the right, as alleged by Tan Ah Poh, and had gone across the path of the Land Rover, then, the front nearside of the Land Rover would have either hit the front wheel of the bicycle, or would have hit the middle portion of the bicycle, and would probably have gone over it, depending entirely on how far across the path of the Land Rover the bicycle had gone. The damage to the bicycle clearly did not support Tan Ah Poh's version.

In my opinion the plaintiff was speaking the truth and I accepted his version of the accident. The accident was caused solely by the negligence of the defendants' driver Tan Ah Poh, who, while driving the Land Rover, failed to keep a proper look out, failed to give any warning of his approach and failed to stop, slow down, swerve or otherwise avoid the said collision. In my opinion there was no negligence on the part of the plaintiff.

The plaintiff was admitted to General Hospital with the following injuries:—

1. Compound fracture of the shaft of the left tibia and fibula.
2. Fracture of the superior pubic rami on both sides and the left inferior pubic ramus on the left side.
3. Contusion of the urinary bladder and extra-peritoneal haemorrhage.
4. Minor abrasions.

Injury No. 1 was managed in the orthopaedic department of the General Hospital and a secondary suture was done on the 3rd December 1965. The plaintiff was discharged in P. O. P. cast on the 12th December 1963 and followed up as an out-patient. The plaintiff walks with a limp and finds it difficult to run. The fractures have soundly united in satisfactory alignment though with overlap. There is a one inch shortening in the left leg, half inch wasting of the left calf and one and a half inch wasting of the left thigh. The movements in the left ankle foot are about 70% of normal movements and there is a limitation of 30%. The movement in the ankle and foot should improve further, and the muscle wasting is expected to recover. The surgeon who operated on and looked after the plaintiff estimated that the residual disability from these fractures would be about 20%.

Injuries No. 2 and 4 healed without further trouble. For the third injury a laporatomy was done. The plaintiff was re-admitted to the General Hospital because he had great difficulty in passing urine and was treated further by catheterization and dilatation of his urethra. He still complained of a poor stream and difficulty in passing water which was due to urethral stricture. He was referred to the surgeon on several occasions for distension of the bladder, which was due to the fact that he could not pass urine. The distension of the bladder was relieved by passing a catheter. This was stated to be a very uncomfortable and painful procedure. The surgeon also passed bougies on the 5th May 1965 under general anaesthesia. Although he has no residual trouble from the fracture of the pelvis, he will have to undergo

in future, about once a year, a dilatation in order to make sure that all is well with the urethra. The plaintiff has some difficulty in passing urine and his stream is not what it used to be. According to the surgeon, this will improve in time but he did not think it will ever become normal. The fact that instruments had been passed in the bladder a number of times gives rise to the possibility of infection, and the plaintiff is accordingly more prone than the average man. There was no doubt that the plaintiff had suffered severe injuries. Injury No. 3 would be a great inconvenience for life and it may have later effects.

The plaintiff has lost 75% of the vision of his right eye and he attributed it to this accident. This was disputed by the defendants. Medical evidence on this issue was called by both sides. In my opinion it was not conclusively proved that the plaintiff's loss of vision was in any way attributable to this accident. I therefore held that the plaintiff failed on this issue and was not entiled to any damages for loss of vision.

The plaintiff also claimed loss of future earnings at the rate of $200 per mensem. He testified that prior to the accident he worked as a mason during the day and as a part-time goldsmith at night. According to him, his earnings as a mason averaged $260 per mensem and as a goldsmith $190 per mensem, and he had a total income of $450 per mensem. After the accident he was unable to work as a mason due to the injuries he had suffered. He was unable to stand too long or to squat, and because of that no one would employ him as a mason. He now worked as a full-time goldsmith and earned $250 per mensem.

In my opinion, if the plaintiff could earn $190 per mensem as a part-time goldsmith, working only two or three hours at night, there was no reason why he could not earn double that amount working as a full-time goldsmith. The plaintiff claimed that he could earn only $250 per mensem as a full-time goldsmith. Furthermore, I was not satisfied that a mason he could earn $260 per mensem regularly. It is well-known that masons are employed on daily rates and employment is often irregular. In my opinion, the plaintiff's total income before the accident was about $400 per mensem and that now, working as a full-time goldsmith, he could earn at least $350 per mensem. I therefore held that the loss of income was $50 per mensem and not $200 per mensem as claimed by the plaintiff.

At the time of the accident, the plaintiff was 21 years of age and in considering the loss of future earnings, I had to take into consideration not only the age of the plaintiff but also the normal expectation of an active working life for a man of 21, the hazards and vicissitudes of life itself and the payment of compensation in a lump sum.

I now come to the question of damages. This is always a difficult question, so much so, that Lord Justice Birkett in *Bird* v. *Cocking and Sons Ltd.*[1] was, constrained to observe, at page 1263:—

> "....the assessment of damages in cases of personal injuries is, perhaps, one of the most difficult tasks which a judge has to perform, and certainly the task is no lighter when the appellate court is asked to re-consider the assessment made by a judge in the court below. The task is so difficult because the elements which must be considered in forming the assessment in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the amounts for those particular elements. Although there is no fixed and unalterable standard, the courts have been making these assessments over many years, and I think that they do form some guide to the kind of figure which is appropriate to the facts of any particular case, it being for the judge, or for the appellate court if they are reviewing the matter, to consider the special facts in each case; for I agree with Mr. Veale that one case cannot really be compared with another. The only thing that can be done is to show how other cases may be a guide, and when, therefore, a particular matter comes for review one of the questions is, how does this accord with the general run of assessments made over the years in comparable cases?"

I had also to remind myself of the observations of the Lord President (then Chief Justice of Malaya) in *L. B. Drennan* v. *R. F. Greer*,[2] at p. 82:—

> "Here I will make two observations. One is that so far as concerns such questions as pain and suffering and what the learned judge in this case called loss of amenities, any assessment of damages must contain a very large subjective element. A very large part in the assessment must be played by the personal opinion of the trial judge. It would be difficult, I think, to put one's finger on any authority in terms for that proposition, but it springs from the general principle that essentially the assessment of damages is a jury question. The second thing I would say is that I can find no authority to support the proposition (and personally, as long as I am free to do so I shall set my foot against any attempt to lay down any such rule) that the assessment of damages in personal injury cases must in every case result from the application of some sort of formula, that we must measure the shortening of the leg by the inch, that we must ascertain to the nearest inch the point at which the leg has been amputated, and that we should thereby arrive at some figure which we can use to perform some arithmetical operation or to arrive at some absolute notional standard of damages."

Having considered various cases where damages were awarded for similar personal injuries and taking into account the permanent disabilities above referred to and the consequences thereof, the loss of amenities, the pain and suffering the plaintiff underwent and the loss of future earnings, I assessed general damages at $20,000. I entered judgment for the plaintiff in the sum of $22,821 made up as follows:—

General damages	$20,000
Transport to and from General Hospital	171
Loss of earnings for 4 months at $450 p.m.	1,800
Damage to bicycle	100
Loss of earnings at $50 p.m. for 15 months	750
Total	$22,821

The defendants were ordered to pay the plaintiff's costs as taxed.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Shook Lin & Bok.*

ANG HOCK LEONG & ORS. v. TRUSTEES OF SANDILANDS BUTTERY LOCAL STAFF PROVIDENT FUND & ORS.

[O.C.J. (Winslow J.) August 5, 1965]

[Singapore — Originating Summons No. 42 of 1965]

Provident Fund — Whether a society or not — Whether majority of members can apply for dissolution.

The applicants on behalf of themselves and other members of a staff provident fund representing a majority of members of the fund, applied for the dissolution thereof and payment out to them of the amounts standing to their credit. The fund was constituted by a trust deed and was vested in and administered by the named trustees under rules annexed to the trust deed.

Held: (1) it was impossible on the facts to regard the fund as a society which can be dissolved at the request of the majority of its members;

(2) the fund was a trust in the nature of a superannuation trust for the benefit of members on their retirement and could be wound up only in the circumstances set out in the rules.

Quaere: Whether the fund can be dissolved by the unanimous vote of all its members.

Cases referred to:—

(1) *In re Lead Company's Workmen's Fund Society* [1904] 2 Ch. 196.

(2) *In re Victoria Society* [1913] 1 Ch. 167.

ORIGINATING SUMMONS.

Lim Chor Pee for the applicants.

T. H. A. Potts for the respondents.

Winslow J.: By this originating summons the applicants, on behalf of themselves and 159 other members of the Sandilands Buttery Local Staff Provident Fund, thus representing the vast majority of members of this fund, apply for a dissolution thereof and the payment out to them of the amounts standing to their credit.

The said fund was established by the 2nd and 3rd respondents by a trust deed dated 17th December, 1952 and was vested in and administered by named trustees under rules annexed to the trust deed.

In the middle of 1964 the Comptroller-General of Inland Revenue requested the respondents to amend the rules of the fund to accord with certain conditions of approval of the fund as an "approved fund" for the purposes of the Income Tax Ordinance, which had been communicated previously by circular C.G. 24 dated 15th April, 1964.

The applicants are dissatisfied with the proposed amendments on the ground that their accrued rights may be adversely affected and have accordingly brought the present application for the dissolution of the said fund in order to get back what is due to them before their rights are altered. It is pertinent to note that the trust deed by clause 11 expressly provides that the trustees shall especially have power to vary the trust deed or rules to conform with the requirements from time to time of the Comptroller-General of Income Tax, Malaya.

Reliance has been placed on the cases of *In re Lead Company's Workmen's Fund Society* (1) and *In re Victoria Society* (2) for the proposition that the court has jurisdiction to interpose by ordering a dissolution of such a fund if a large majority of members ask for a dissolution thereof where no provision for winding-up exists.

It is no doubt true that the vast majority of the members of the fund (i.e. 164 out of 172) want a dissolution, but the question arises whether this fund can be held to be a society such as the unregistered friendly societies in the two cases cited above.

Counsel for the applicants submitted that it did not make the slightest difference whether the fund can be said to be a society or not. I find this proposition somewhat puzzling because if the fund is not a society then these cases will not help him at all. (I take that it is not registered under the Societies Ordinance (Cap. 228)). What I think he really meant was that the fund was in fact a society such as the societies in the two cases cited, because it is only if the fund is such a society that the court has power to interfere and wind it up at the request of the vast majority of its members.

I agree that there are many similarities between the fund in the present case and the societies in the above cases, and I have also borne in mind that the mere fact that a fund is not described as a society will not prevent it from being held to be a society if, in fact, it is a society.

In the case of *In re Lead* above the society existed for the benefit of certain workmen in the company and although the governor and company were trustees of the funds standing to the credit of the society, the society itself was managed by a general committee assisted by a finance committee and certain local committees. The governor and company were merely custodians of the invested funds and were therefore, custodian trustees at the very most and not managing trustees. Membership of the society was confined to workmen, etc. in the employment of the company. The funds *belonged* to the members of the society. The rules of the society